STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED January 25, 2000
v	No. 208873 Mecosta Circuit Court
CHRISTOPHER C. STRUNK, Defendant-Appellant.	LC No. 97-003923-FH

Before: Markey, P.J., and Murphy and R.B. Burns*, JJ.

PER CURIAM.

Defendant appeals by right from his jury conviction of possession of more than 50, but less than 225, grams of heroin, MCL 333.7403(2)(a)(iii); MSA 14.15(7403)(2)(a)(iii), for which he was sentenced to imprisonment for ten to twenty years. We affirm.

This case arises out of an emergency call regarding a man who had reportedly passed out at the apartment of defendant's girlfriend, Kara Brutchak. When police arrived at Brutchak's apartment, they found Donald Surratt, dead of a suspected drug overdose. A subsequent consensual search of the apartment resulted in the discovery of a substantial amount of heroin hidden in a box in Brutchak's bedroom closet. Defendant had been visiting Brutchak from Pennsylvania and was present when the officers arrived on the scene and was arrested the following day while attempting to leave the state.

I

Defendant first contends that the trial court erred in denying his motion to suppress certain inculpatory statements he made without the benefit of *Miranda*[1] warnings during a police interview conducted before his arrest. Specifically, defendant argues that being placed in a police car that cannot be opened from the inside and then transported to a police station for questioning is a custodial situation requiring advisement of rights under *Miranda*.

The trial court's ruling on defendant's motion to suppress is subject to our de novo review.

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

People v Marsack, 231 Mich App 364, 372; 586 NW2d 234 (1998). It is well settled that *Miranda* warnings need be given only in situations involving a custodial interrogation. *People v Hill*, 429 Mich 382, 384; 415 NW2d 193 (1987); *People v Zahn*, 234 Mich App 438, 449; 594 NW2d 120 (1999). To determine whether a defendant was in custody at the time of the interrogation, we look at the totality of the circumstances, with the key inquiry being whether the accused reasonably could have believed that he was not free to leave. *Zahn*, *supra*.

Here, even assuming defendant was in custody during the time he was transported to the station house, no interrogation requiring *Miranda* took place during the time he was inside the patrol car, nor were any inculpatory statements apparently made at that time. See, e.g., *People v Raper*, 222 Mich App 475, 479-480; 563 NW2d 709 (1997). Moreover, once defendant arrived at the station house, he awaited his interview in the outer lobby of the police station unrestrained and unattended. The interview took place in the investigating detective's office in a polite and friendly manner after defendant, by his own admission, was immediately and specifically informed that he was not under arrest and was free to leave at any time. Understanding this, defendant willingly chose to speak with the detective. That he was also in a police dominated atmosphere at that time is not sufficient to require that he be informed of his right under *Miranda*. *Oregon v Mathiason*, 429 US 492, 495; 97 S Ct 711; 50 L Ed 2d 714 (1977); *People v Mendez*, 225 Mich App 381, 383-384; 571 NW2d 528 (1997).

Given the totality of the circumstances in this case, we do not believe that defendant was "in custody" so that *Miranda* warnings were required. The trial court did not err in denying defendant's motion.

II

Defendant next claims the trial court erred in denying his motion to suppress his statements to police following his warrantless arrest. Defendant argues that because police lacked sufficient probable cause to effectuate the arrest, the warrantless arrest was illegal and thus any statements made by him at that time were inadmissible. We disagree.

A police officer may arrest without a warrant if he has probable cause to believe that a felony has been committed and that the suspect committed it. MCL 764.15; MSA 28.874; *People v Champion*, 452 Mich 92, 115; 549 NW2d 849 (1996). Such reasonable or probable cause necessary to effectuate an arrest exists where the facts and circumstances within the officer's knowledge and of which he has reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed. *Id*. "Only a probability or substantial chance of criminal activity, not an actual showing of criminal activity," need be shown to validate the arrest. *People v Lyon*, 227 Mich App 599, 611; 577 NW2d 124 (1998), citing *Illinois v Gates*, 462 US 213, 243 n 13; 103 S Ct 2317, 2335 n 13; 76 L Ed 2d 527 (1983).

The record convinces us that the arresting officers were provided with sufficient probable cause to effect defendant's warrantless arrest. The testimony of the arresting officers indicated

that defendant had, on the day before his arrest, admitted to police that he had aided in the packaging of the heroin for sale to individuals after which he placed the heroin in the box which he then placed inside Brutchak's closet, where it remained until discovered by police. This admission alone was sufficient to warrant a prudent person in believing that defendant had committed a felony. See MCL 333.7401; MSA 14.15(7401), MCL 333.7106(2); MSA 14.15(7106)(2); see also *People v Simmons*, 134 Mich App 779, 782-783; 352 NW2d 275 (1984).

Moreover, contrary to defendant's assertion, the officers had reasonable cause to believe that the substance found in the box was in fact illegal narcotics. The distinctive manner in which the substance was packaged, combined with its clandestine location when found, gave the officers reasonable cause to believe the substance was an illegal drug. See, e.g., *People v Hamp*, 170 Mich App 24, 33; 428 NW2d 170 (1988). This belief was further strengthened by defendant's statements during the previous interview when he described to the investigating officer how he allegedly aided Surratt in the repackaging of the heroin into smaller packets for the purpose of sale, and by the fact that Surratt, who was suspected to have died from a drug overdose, was found to have a similar packet of the same substance hidden in his shoe.

Furthermore, we are unpersuaded by defendant's contention that police were not entitled to rely upon Brutchak's statement that it was defendant who had brought the drugs to her apartment from Pennsylvania, and that he was preparing to leave the state.

Defendant argues that this statement was essentially an informant's tip that must be supported by specific factual circumstances establishing reliability before the information can form the basis for probable cause. Although we conclude that the officers possessed sufficient probable cause to effect defendant's arrest without Brutchak's statements, we note that in light of the officers' subsequent corroboration of her statements, Brutchak's statements were of sufficient reliability to allow police to also rely on that information for purposes of probable cause. *People v Levine*, 461 Mich 172; 600 NW2d 622 (1999); *People v Walker*, 401 Mich 572; 259 NW2d 1 (1977). Therefore, the trial court properly denied defendant's motion to suppress.

III

Defendant next argues that the trial court erred when it denied his motion to suppress the heroin found in Brutchak's apartment because the police officers exceeded the scope of actual consent given by Brutchak to search. Defendant's argument is without merit.

A trial court's decision regarding the validity of the consent to search is reviewed by this Court under a standard of clear error. *People v Farrow*, 461 Mich 202, 209; 600 NW2d 634 (1999). The consent exception to the warrant requirement allows a search and seizure when consent is unequivocal, specific, and freely and intelligently given. *People v Kaigler*, 368 Mich 281, 294; 118 NW2d 406 (1962); *Marsack, supra* at 378. We note that the trial court's resolution of this issue was based upon its determination of the credibility of the testimony presented at the hearing. We accord a significant measure of deference to the trial judge's

credibility judgment because he was in the best position to decide the parties' respective believability. *Farrow, supra*. The officer who obtained Brutchak's consent testified during the hearing that he specifically informed her that he wished to search the entire apartment after which she was read a completed consent-to-search card outlining the scope of the search as the entire apartment. The card, which was admitted into evidence at the hearing, was signed by Brutchak and clearly outlined her right to refuse consent to the search at any time before seizure of evidence. Although defendant presented testimony to the contrary, yielding to the trial judge's ability to assess the credibility of the witnesses before him, we cannot say that the decision finding valid consent to search the apartment was clear error.

IV

Next, defendant challenges the trial court's admission of testimony concerning his possession of drug paraphernalia at the time his arrest. Defendant argues that this testimony was both irrelevant and highly prejudicial, and thus denied him a fair trial. We disagree.

We review a trial court's decision to admit evidence for an abuse of discretion. *People v Lukity*, 460 Mich 484, 488; 596 NW2d 607 (1999). An abuse of discretion will be found only when an unprejudiced person, considering the facts on which the trial court acted, would say there was no justification or excuse for the ruling made. *People v Lugo*, 214 Mich App 699, 709; 542 NW2d 921 (1995).

Generally, relevant evidence is admissible, and irrelevant evidence is inadmissible. MRE 402; *People v Starr*, 457 Mich 490, 497; 577 NW2d 673 (1998). Evidence is relevant if it has any tendency to make the existence of a fact which is of consequence to the action more or less probable than it would be without the evidence. MRE 401; *People v Crawford*, 458 Mich 376, 388; 582 NW2d 785 (1998).

Here, the evidence was relevant, even if only marginally so, to defendant's knowledge that the package contained illegal drugs. Because the prosecutor was obligated to prove that defendant knowingly possessed the heroin, knowledge was in fact "in issue" for purposes of trial. See MCL 333.7403(1); MSA 14.15(7403)(1). Moreover, the evidence was not unduly prejudicial. MRE 403. Given defendant's admission that he realized that the package found by him contained some form of controlled substance, either cocaine or heroin, it cannot reasonably be concluded that evidence of his drug use would have been given "undue or preemptive weight by the jury" in deciding his guilt or innocence, and thus the trial court did not abuse its discretion in admitting the testimony.

Defendant also contends that the trial court erred in admitting expert testimony regarding the value of the heroin, arguing that this testimony was both irrelevant and prejudicial. We disagree. The high value of the package allegedly found by defendant tends to discredit the notion that someone had lost or otherwise left the package to be found by defendant and was thus relevant to the issue of defendant's credibility. MRE 401; see *People v Mumford*, 183 Mich App

149, 152; 455 NW2d 51 (1990)(the credibility of a witness is an issue "of the utmost importance" in every case). Therefore, the testimony was properly admitted.

We affirm.

/s/ Jane E. Markey
/s/ William B. Murphy
/s/ Robert B. Burns

[1] *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).